

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 04-1753
Letter Released: June 21, 2004

In reply refer to:
Room 3A740

Richard Zaragoza, Esq.
Paul Cicelski, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037

Re: Emergency Request for Broadcast EEO Audit Relief

Dear Messers. Zaragoza and Cicelski:

This is in reference to your June 7, 2004, Emergency Request for Relief Under Broadcast EEO Audits, filed on behalf of 45 State Associations of Broadcasters. Your request asks the Commission to withdraw all EEO audit letters mailed to radio and television stations and delay any further mailings until at least 90 days after the Commission acts upon pending petitions for reconsideration of the EEO rules, or to extend the deadline for responding to the audit letters until that time. You argue that a delay is necessary because it will allow stations the opportunity to incorporate the matters decided in the reconsideration decision into their EEO programs before the audits are reinstituted. You also allege that the audits prejudice issues raised in petitions for reconsideration, that they are inconsistent with the scope of the Commission's EEO program, and that they should be treated confidentially.

Your request is denied. The EEO rules have been in effect and have been enforced for more than a year, since March 10, 2003. The audits are therefore not premature and, given that the review is based on our current rules, there is no basis to delay audits pending possible revisions to those rules. Similarly, enforcement of our existing rules in no way prejudices issues raised on reconsideration and, although the letters are clear and unambiguous in their terms, broadcasters with specific questions may call the EEO staff for further clarification.

Your allegation that the audits are outside the scope of the Commission's EEO program is also incorrect. You claim that the number of stations to be audited exceeds the Commission's five percent estimate of broadcast stations to be audited every year because the audits include all stations within a particular station employment unit ("SEU") with which the audited station is associated. We understand that some audited stations are part of larger employment units and will take this into account as we

complete the audit through the remainder of this year. Thus, we do not expect to audit more than five percent of stations, although we do not believe that an audit in excess of that number would result in a cognizable injury to any party.

You also claim that the audit letters go beyond the scope of the Commission's authorized EEO audits because they request materials in addition to what is contained in a station's EEO public file. The Commission has stated that its random audits will require broadcasters to provide upon request documentation verifying compliance with the EEO rules.¹ The audit letters do not ask for documents or information beyond that required by our EEO rules. Thus, the audit letters comply with the Commission's authorized procedure for EEO audits.

Finally, you state that the Commission's customary practice is to maintain the confidentiality of investigations and you argue that licensees should not be required to place a copy of the audit letter and responses in their public inspection file. Sections 73.3526(e)(10) and 73.3527(e)(11) of our rules, however, quite clearly provide that broadcast stations must place in their local public inspection files material relating to FCC investigations. We have no warrant to deviate from that requirement here.

Accordingly, in view of the foregoing, the Emergency Request for Broadcast EEO Audit Relief filed by the State Associations of Broadcasters IS DENIED.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau

¹ *Second Report and Order and Third Notice of Proposed Rulemaking*, 17 FCC Rcd 24018, 24060 (2002).